

DEVELOPMENT SERVICES DEPARTMENT
Planning & Zoning Division

MEMORANDUM
PZ 1-30-01

TO: Mayor Harry Venis
Councilmembers
Monroe Kiar, Esq., Town Attorney

THRU: Mark A. Kutney, AICP, Development Services Director

THRU: Jeff Katims, AICP, Planning and Zoning Manager

FROM: Marcie Oppenheimer Nolan, AICP, Planner II

DATE: February 1, 2001

RE: *Conflict of Interest Determination*

This item is before Town Council on the recommendation of the Town Attorney. At issue is whether or not a developer's use of the Town's urban design consultants, Dover-Kohl and Associates, to prepare conceptual schematic plans and/or basic sketches for individual properties, constitutes a conflict of interest. (See attached memo from Town Attorney, Monroe Kiar, dated December 22, 2000)

The Town of Davie retained the urban design and planning consulting services of Dover-Kohl and Associates to assist in preparation of urban design standards for the Griffin Road Corridor District. They are also currently designing a schematic master plan for the corridor.

The Griffin Road Corridor Ordinance was adopted by Town Council through Ordinance 2000-007. This Ordinance requires all property along Griffin Road, from University Drive east to SR 7, to be developed according to the requirements as stated. The impetus for these new guidelines was the widening of Griffin Road which created a unique opportunity to design a cohesive mixed-use community.

The design requirements for the Griffin Corridor are based on the new-urbanist model; radically different than most current land development regulations and representing a unique way of thinking. The new-urbanist model is based on the early neighborhood concept with buildings up close to the street, front porches, wide sidewalks, and parking located along the street and in the rear. The intent is to create a walkable, friendly environment encouraging people to shop, eat, and live in one neighborhood. Staff wishes to ensure that all applicants preparing to develop along the corridor fully understand the design requirements of the district through a mandatory pre-application meeting with Dover-Kohl and staff providing guidance to the developer prior to site plan submittal. Dover Kohl would also be utilized as a member of the Development Review Committee (DRC) during the site plan review process. This helps to ensure that developers and their design team are assisted throughout the development process resulting in a better product for the developer and the Town.

Staff could utilize the following processes, at the discretion of Council, to involve Dover Kohl in the site planning process:

Required Process for all Development along the Griffin Corridor District

The Town would require all developers to have a pre-application meeting with staff and our consultant, who would then provide guidance and critique the applicant's proposal, for any project within the Griffin Corridor District. Dover Kohl would also participate as a member of DRC in the site plan review process. A flat fee would cover these expenses and be included in application fees, which would be increased accordingly. (This process is similar to the existing site plan process in which members of Engineering, Planning, Parks and Recreation, Fire, Police and Public Works review all site plans, although slightly expanded to include the urban design services of Dover Kohl.)

Developer Initiated

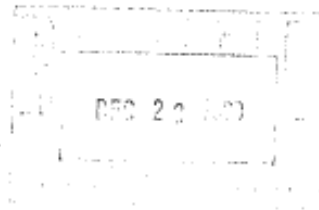
Developers often ask Town staff what the Town would like to see built on their parcel of land in order to smooth the renewal and approval process while developing something beneficial to the Town. The input staff provides usually takes the form of preferred land uses and intensities that would enhance compatibility with adjacent land uses, or provide needed services to an area, but sometimes includes schematic design suggestions. If a situation should arise in which a developer requests additional guidance in the form of detailed conceptual design alternatives for a particular site, staff wishes for more specific direction from Town Council regarding their comfort level with the following. The Town could utilize Dover Kohl to prepare one or more conceptual drawings, with staff review and input. These would be provided to the developer as alternatives the Town may like to see implemented. The developer may or may not use the conceptual plans, to be fully designed by the developer's own team of engineers and architects, at their own discretion. The developer would pay the Town for these services, and the Town would be responsible for paying the consultant.

To safeguard the Town, all communication with the applicant and the consultant would be at the approval of Town staff. The firm of Dover Kohl would not be able to act as agent, petitioner, architect, or similar for any site plans or other projects in the Town as long as this agreement was in place.

The time and energy spent by the Town in creating the Griffin Corridor District requires that all site plan, plats and any other development within the corridor adhere to both the requirements and intent of the district. The use of Dover-Kohl as consulting urban designer would assist the Town in realizing their vision and is similar to the use of other consultants within the development review process (i.e. traffic engineers, landscape architects).

Staff wishes to utilize the services of Dover-Kohl and bring this forward as a discussion item to ensure that there is no perceived or actual conflict of interest between a urban design, planning and architecture firm and the Town.

MONROE D. KIAR
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TOWN OF DAVIE
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SUPPLEMENTAL MEMORANDUM

DATE: December 22, 2000

TO: Marcie Oppenheimer Nolan, AICP, Planner II
Mayor and Councilmembers
Town Administrator
Jeff Katims, AICP, Planning and Zoning Manager

FROM: Monroe D. Kiar *[Signature]*

RE: Control No. 001209
Legal Opinion - Conflict of Interest Determination
Dover - Kohl Architects & Planners

Request: You have requested that I give a legal opinion concerning the issue of a potential conflict concerning Dover - Kohl Architects & Planners.

Answer: The issue of conflict is a fact intensive. This office prepared two memorandums and the Town Council had extensive discussion concerning the issue of conflict as it involved Pillar Consultants. The issue of conflict is a policy decision for the Town Council. This office suggests that the Town Council make a determination concerning Dover - Kohl Architects & Planners. The Town Council has the discretion to make a policy decision as to how it desires to handle this situation. From the information presented, it has the discretion to determine that this situation is acceptable or not acceptable, and in the event that it desires Dover - Kohl Architects & Planners to do the work under the situation presented, what disclosures it desires Dover - Kohl Architects & Planners to make, and what procedure it desires implemented. Staff has presented two possible scenarios, and these scenarios are discussed, and the Town Attorney's office has discussed concerns concerning the Town being

involved in preparing plans, even if it is through its consultants, and a concern of setting up a procedure which gives unfair competitive advantage to a Town consultant over other architect-land planners. It is suggested that this matter be placed on an Agenda for the Town Council to make a determination as to how it desires to handle this matter.

Discussion:

Attached is Marcie Oppenheimer Nolan's memorandum.

The following is stated from a previous memorandum from this office: "The issue of conflict is usually very fact intensive and in many situations subjective. Fact intensive in that the facts can determine the determination: change a certain fact or facts, and the determination can change. Subjective in that there is reasonable discretion that the policy maker can make, meaning that there is a range of determinations that can be made: a reasonable determination can be made by one policy maker, and a different decision can be made by another policy maker, with both being a valid exercise of discretion. It must be realized that while the decision maker has the discretion to make the decision, that decision may be fairly evaluated by third persons and/or the public as a good or poor judgmental decision."

A determination has to be made as to how strictly or leniently the Town desires declaring a conflict. The fact that there is a potential conflict cannot be ignored but rather needs to be evaluated. The matter still comes down to the discretion of the Town Council in this situation. The Town Council can make the policy decision that it desires. Staff has indicated in its memorandum that: "Staff has reflected upon this situation and feels that if the Town continues to retain the services of Dover-Kohl as consultants and requires all property coming into the Town for development approval, within the Griffin Corridor, to meet with the Town's consultants to conceptually design the site, along with the property owners own team of architects and site planners, this does not constitute a conflict of interest. The property owner would be required by the Town to reimburse the Town for fees accrued by the meetings between the property owner and the Town's design consultant."

The memorandum from Staff indicates the following:

1. Dover - Kohl Architects & Planners has been retained by the Town to do work involving Griffin Road including the original Griffin Corridor Study, as well as a new Master Plan for the Griffin Road Corridor, and related services. Included within this work is designing the Master Plan for the Griffin Road corridor and consulting with staff on site plan review and architectural issues.

2. A developer has approached (and implicitly other developers in the future are anticipated to approach) Dover - Kohl Architects & Planners to design a site located within the Griffin Corridor.
3. Staff has proposed two potential scenarios, which involve the implementation of specific procedures.

Your memorandum suggests two possible scenarios. This office will comment upon the two different scenarios proposed by Staff:

Scenario #1: "A developer wants to use our consultants to prepare an extensive, but conceptual master plan of a property. In this scenario, the developer approaches our consultant directly, or asks staff for use of our consultant." A few questions arise from Scenario #1: 1. Should the Town be getting in the position of preparing extensive conceptual plans¹, rather than reviewing them? This office is of the opinion that the Town should not be in position of actually preparing plans, rather than just reviewing them. The criteria of the Griffin Road Ordinance should be sufficiently detailed so that a qualified architect-planner could prepare an extensive plan; 2. Is it reasonable to believe that a developer and/or owner will not believe that it is to its advantage to use the Town's consultant to do the extensive conceptual master plan, thus creating an unfair competitive advantage in favor of the Town's consultant over other architect/land planners?

Scenario #2: "The Town would require all developers to have a minimal consultation meeting with our consultant, who could prepare a basic conceptual plan², for the applicant, or critique the applicant's proposal as part of the standard development review process." Applicants should be treated equally in similarly situated circumstances. A question which arises from this scenario: Should the Town be getting in the position of preparing basic conceptual plans, rather than reviewing them? This office is of the opinion that the Town should not be in position of actually preparing plans, rather than just reviewing them. The criteria of the Griffin Road Ordinance should be sufficiently detailed so that a qualified architect-planner could prepare the plan. Scenario #2 sets forth an official procedure where it is institutionalizing that the consulting architect-planner is positively doing a "minimal" consultation where the consultant "who could prepare a basic conceptual site plan" concerns property in that area. That is a solution that is even more extensive than the question posed by the

¹From the procedure described, the reality is that the plans are being prepared under the auspices of the Town according to a procedure the Town would be instituting under the procedure suggested in this Scenario #1.

²As with Scenario #1, from the procedure described, the reality is that the plans are being prepared under the auspices of the Town according to a procedure the Town would be instituting under the procedure suggested in this Scenario #2.

architect-planner in that presently Dover - Kohl is asking if the Town considers a conflict as concerns a specific developer, whereas the policy suggested in Scenario #2 institutionalizes the requirement to have the services of Dover - Kohl in both an initial consultation and the preparation of a conceptual plan.

It is understandable that the Town Staff desires that designs submitted and properties developed in the corridor meet the intent and criteria of the Griffin Road Ordinance. And Staff obviously has a high regard for the work of Dover - Kohl. However, the Town is not the "employer" of Dover - Kohl, but rather a contractor for the independent agent work of Dover - Kohl [an employer has much more control over the work of an employee than an independent agent]. Further, the Town has to ask itself: to what extent does the Town compromise itself (and the public at large, who it serves) by being actively engaged through its consultants in preparing plans rather than just reviewing them? There are significant potential problems with Dover - Kohl doing work for a developer as described in Staff's Memorandum, and there are significant potential problems with both scenarios suggested by Staff, but it is the policy decision of the Town Council as to how it desires this matter be resolved.

Staff is complimented on its detailed memorandum presenting this matter. It is suggested that this matter be placed on an Agenda for the Town Council to make a determination as to how it desires to handle this matter.

DEVELOPMENT SERVICES DEPARTMENT

Planning & Zoning Division

MEMORANDUM
PZ 11-25-00

TO: Monroe Kiar, Esq., Town Attorney

THRU: Jeff Katims, AICP, Planning and Zoning Manager

FROM: Marcie Oppenheimer Nolan, AICP, Planner II

DATE: December 20, 2000

RE: *Conflict of Interest Determination*

The Town has retained the architecture and planning firm of Dover - Kohl and Associates for work involving Griffin Road including the original Griffin Corridor Study, as well as a new Master Plan for the Griffin Road Corridor, and related services.

Dover-Kohl has been approached by a developer to design their site, which is located within the Griffin Corridor. We have been asked by the firm if this represents a conflict of interest for the firm, as Dover - Kohl is designing the Master Plan for the Griffin Road corridor and consulting with staff on site plan review and architectural issues.

Staff has reflected upon this situation and feels that if the Town continues to retain the services of Dover-Kohl as consultants and requires all property coming into the Town for development approval, within the Griffin Corridor, to meet with the Town's consultants to conceptually design the site, along with the property owners own team of architects and site planners, this does not constitute a conflict of interest. The property owner would be required by the Town to reimburse the Town for fees accrued by the meetings between the property owner and the Town's design consultant.

There are two distinct scenarios which may occur:

- 1) A developer wants to use our consultants to prepare an extensive, but conceptual master plan of a property. In this scenario, the developer approaches our consultant directly, or asks staff for use of our consultant; and
- 2) The Town would require all developers to have a minimal consultation meeting with our consultant, who could prepare a basic conceptual plan, for the applicant,

The second scenario would occur with every application for site plan approval we receive. Consultation with our consultant would be mandatory as a “pre-application process” and possibly as a review function once the plans are submitted.

For the first scenario we are proposing the following process:

The developer would ask us to have our consultant make a recommendation for development of their property. We would request that Dover-Kohl prepare a scope of work letter for both the developer and the Town. Dover-Kohl would estimate the cost of the service, and would bill us, the Planning and Zoning Division, for this service. The developer would then reimburse the Town for this amount to cover our costs.

Dover-Kohl would prepare a detailed conceptual master plan (not a specific site plan) based upon the type of development the developer intends to construct on the property. The developer's own team of professionals may do with it what they wish but ultimately a plan would be submitted which meets both the intent and the regulations of the Griffin Corridor. This plan would be consistent with the Town's best interests given the parameters the developer stipulates. Where there is a potential conflict between the Town's best interests and ordinances, and the product the developer desires, Dover-Kohl would consult with staff, as we are their employer, contractually.

The two scenarios would allow the Town to receive designs meeting both the intent and specific criteria of the Griffin Road Ordinance, as a benefit to the Town. Would the process we are proposing eliminate any actual or perceived conflict of interest between property owners, the Town's consultants, and the Town, given both scenarios? Please advise.

If you have any questions or comments, please feel free to contact me at 797-1074.

Thank you.

cc: Mark A. Kutney, Development Services Director
Grace Hall, Administrative Assistant